



Early Journal Content on JSTOR, Free to Anyone in the World

This article is one of nearly 500,000 scholarly works digitized and made freely available to everyone in the world by JSTOR.

Known as the Early Journal Content, this set of works include research articles, news, letters, and other writings published in more than 200 of the oldest leading academic journals. The works date from the mid-seventeenth to the early twentieth centuries.

We encourage people to read and share the Early Journal Content openly and to tell others that this resource exists. People may post this content online or redistribute in any way for non-commercial purposes.

Read more about Early Journal Content at <http://about.jstor.org/participate-jstor/individuals/early-journal-content>.

JSTOR is a digital library of academic journals, books, and primary source objects. JSTOR helps people discover, use, and build upon a wide range of content through a powerful research and teaching platform, and preserves this content for future generations. JSTOR is part of ITHAKA, a not-for-profit organization that also includes Ithaka S+R and Portico. For more information about JSTOR, please contact support@jstor.org.

331. Acceptance of a paper which purports to be a contract sufficiently indicates an assent to its terms, whatever they may be, and it is immaterial that they are in fact unknown. *Watkins v. Rymill*, 10 Q. B. D. 178. See *Upton v. Tribilcock*, 91 U. S. 45, 50. See also 1 WILLISTON ON CONTRACTS, § 90 a. Hence a shipper who takes a bill of lading or express receipt without objection, should be bound by the terms of the contract stated therein. *Hooker v. Boston & Maine Ry. Co.*, 233 U. S. 97; *Grace v. Adams*, 100 Mass. 505; *Hill v. Syracuse, etc. Ry. Co.*, 73 N. Y. 351. See *Parker v. Southeastern Ry. Co.*, 2 C. P. D. 416, 422. But this principle has been qualified in some cases where the receipt was not readily legible. *Richardson v. Rountree*, [1894] A. C. 217; *Blossom v. Dodd*, 43 N. Y. 264; *Verner v. Sweitzer*, 32 Pa. 208. And some courts have gone so far as to hold that there was no contract where the carrier did not prove actual assent. *Curtis v. United Transfer Co.*, 167 Cal. 112, 138 Pac. 726; *Chicago & Northwestern Ry. Co. v. Simon*, 160 Ill. 648, 43 N. E. 596; *Wichern v. United States Express Co.*, 83 N. J. L. 241, 83 Atl. 776. It is suggested that these limitations are dictated by a desire to protect the shipper, in a necessarily rapid transaction, in which he is at a disadvantage. They are, nevertheless, departures from strict principles of contract.

CONSTITUTIONAL LAW — INTERPRETATION OF THE SIXTEENTH AMENDMENT. — The plaintiff, a District Judge of the United States, sought to recover the amount of a tax paid by him, under protest, upon his total income, including his official salary. It was argued that such a tax was a reduction of his salary contrary to Art. III, § 1, of the Constitution. *Held*, that the tax be refunded. *Evans v. Gore*, 40 Sup. Ct. Rep. 550.

For a discussion of the principles involved in this case, see NOTES, p. 70, *supra*.

CONSTITUTIONAL LAW — POWERS OF THE JUDICIARY — STATUTE VALID IN ITS INCEPTION CAN LATER BE HELD CONFISCATORY BECAUSE OF ALTERED PRICE LEVEL. — The maximum rates that may be charged for gas in New York are fixed by statute. (LAWS 1905, c. 736; LAWS 1906, c. 125.) The United States Supreme Court in 1909 upheld the constitutionality of these rates. *Willcox v. Consolidated Gas Co.*, 212 U. S. 198. For eight years gas was furnished thereunder at a profit. Since 1917, it is alleged, higher costs occasioned by the war have caused a deficit. The gas company asks that the statutory rate be declared void, as confiscatory. *Held*, that the court has jurisdiction to determine the question, since by reason of changed conditions an act, valid in its inception, may become unconstitutional, as confiscatory. *Bronx Gas & Electric Co. v. Public Service Commission*, 180 N. Y. Supp. 38 (App. Div.).

It is now customary for courts, in their decrees, to allow an opportunity for a practical test of the rate in question. *Darnell v. Edwards*, 244 U. S. 564; *Willcox v. Consolidated Gas Co.*, *supra*. But the language of such decrees does not contemplate the case of initial reasonableness, followed by later confiscatory effect. It has only recently been recognized that the judicial enforcement of such a rate will continue only as long as its reasonableness continues. Even if the rate, as originally approved, has shown itself reasonable for many years (as it did in the principal case), changing conditions will justify a refusal to apply it any longer. "In all such legislation, from the hour of its enactment, there thus inheres the seed of an infirmity which the future may develop." *Municipal Gas Co. of Albany v. Public Service Commission*, 225 N. Y. 89, 121 N. E. 772. See *Missouri v. Chicago, Burlington & Quincy R. R.*, 241 U. S. 533, 539. Conversely, where a rate is held confiscatory, the court may insert a provision in the decree that the State, or Commission, in interest may apply for a further decree, whenever it shall appear that, by reason of a change in

circumstances, the rate fixed is sufficient to yield reasonable compensation, *Minnesota Rate Cases*, 230 U. S. 352, 473; *Missouri Rate Cases*, 230 U. S. 474, 508.

CONSTITUTIONAL LAW — TRIAL BY JURY — INFRINGEMENT OF RIGHT BY PARTIAL NEW TRIAL. — After verdict in the Federal District Court for damages for personal injuries, the plaintiff was allowed a new trial on the sole issue of damages. The verdict on the restricted issue was rendered, and judgment was entered thereon. *Held*, that a partial new trial is unconstitutional. *McKeon v. Central Stamping Co.*, 264 Fed. 385 (C. C. A.).

For a discussion of this case, see NOTES, p. 72, *supra*.

CONSTITUTIONAL LAW — WHO CAN SET UP UNCONSTITUTIONALITY — WHETHER PUBLIC OFFICIAL HAS SUFFICIENT INTEREST. — The defendant, Secretary of State for North Dakota, refused to receive and file an application tendered by the plaintiff to take advantage of a state corporation statute. The plaintiff petitioned for mandamus to compel the defendant to accept and file the application. The defendant rested his case on the alleged unconstitutionality of the statute, as affecting adversely the rights of minority stockholders. *Held*, that the defendant cannot avail himself of this defense. *Mohall Farmers' Elevator Company v. Hall, Secretary of State*, 176 N. W. 131 (N. D.).

The court will not listen to an objection to the constitutionality of a statute, made by one whose rights are not directly affected thereby. *Hooker v. Burr*, 194 U. S. 415. See 21 HARV. L. REV. 438. Hence, it has been said by some courts, in a mandamus proceeding to enforce the performance of a statutory ministerial duty by an administrative officer, he cannot question the constitutionality of the statute involved. *Franklin County Comrs. v. State*, 24 Fla. 55, 3 So. 471; *Smyth v. Tilcomb*, 31 Me. 272. But the defense is allowed when, it is said, the officer will violate his duty under his oath of office, or otherwise render himself personally liable, by acting under a void statute. *State v. Clausen*, 65 Wash. 156, 117 Pac. 1101; *State v. Wheatley*, 113 Miss. 555, 74 So. 427. It is fundamental, however, that an unconstitutional act is not a law, and binds no one. *Marbury v. Madison*, 1 Cranch (U. S.) 137. And where there is no law there is no ground for compelling the officer to act; hence unconstitutionality should be a good defense to any proceeding to enforce a statute by mandamus. *Brandenstein v. Hoke*, 101 Cal. 131, 35 Pac. 562; *State v. Candland*, 36 Utah, 406, 104 Pac. 285; *State v. Tappan*, 29 Wis. 664. Furthermore, it would seem that any act done by an officer in pursuance of an unconstitutional statute would be a violation of his duty under his oath to support the Constitution. See *Denman v. Broderick*, 111 Cal. 96, 99, 43 Pac. 516, 518; *Rhea v. Newman*, 153 Ky. 604, 607, 156 S. W. 154, 156. However inconvenient it may be to have petty administrative officials constantly questioning the statutes under which they are ordered to act, it seems that their right to do so must be conceded.

CONSTRUCTIVE TRUSTS — SUBROGATION — RIGHTS OF LENDER AGAINST PREVIOUSLY MORTGAGED PROPERTY. — An owner of certain personal property incumbered it with two successive chattel mortgages, both of which were duly recorded. He then represented to the plaintiff that the property was unincumbered. Plaintiff thereupon loaned him a sum of money and took an unsecured note in return. With this money the mortgagor paid off part of the first mortgage. The mortgagor having died, and all the creditors being before the court in a suit to dispose of the property, plaintiff requested that he be subrogated, to the extent of this payment, to the rights of the first mortgagee. *Held*, that the request be refused. *Southern Trust Co. et al. v. Garner et al.*, 223 S. W. 369 (Ark.).

Where one's property is wrongfully acquired by another, equity will impose